

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

385I0027

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1055** - 01/24/2003

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to revise the authority of magistrate courts and to revise
2 certain provisions pertaining thereto.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 As used in this chapter, the term, magistrate, means a clerk magistrate or a magistrate judge
7 appointed under the authority of this chapter. Any magistrate judge appointed under the
8 authority of this chapter shall be licensed to practice law in the State of South Dakota.

9 Section 2. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 Pursuant to the provisions of S.D. Const., Art. V, § 4, there is hereby established within each
12 judicial circuit a magistrate court.

13 Section 3. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any magistrate court with a magistrate judge presiding is a court of record. However, no



1 magistrate court with a clerk magistrate presiding is a court of record.

2 Section 4. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Subject to such rules as may be promulgated by the Supreme Court, the presiding circuit
5 judge in each judicial circuit shall appoint a sufficient number of magistrates as may be necessary
6 to provide adequate and qualified judicial personnel for each county and municipality in the
7 circuit.

8 Section 5. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Each magistrate shall be appointed by the presiding judge of the circuit court and serve at
11 the pleasure of the presiding judge. However, the Supreme Court may, by rule, provide that
12 magistrates may be appointed for a definite term.

13 Section 6. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
14 as follows:

15 The compensation of a magistrate shall be fixed by law and for such purpose the Supreme
16 Court in its annual consolidated budget for the Unified Judicial System shall make
17 recommendations relating thereto. The state shall provide from funds appropriated therefor for
18 the salaries and travel expenses of the magistrates of the circuit court.

19 Section 7. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final
22 order or judgment of the magistrate court, and such appeal shall be taken in the manner
23 prescribed by law or rule for appeals to the circuit court.

24 Section 8. That chapter 16-12A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Each county in the state shall provide suitable and adequate facilities for the magistrate court,
3 including the facilities necessary to make the space provided functional for its intended use.

4 Section 9. That chapter 16-12A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any municipality in the state may, at its discretion, and in cooperation with the presiding
7 judge of the circuit, provide suitable and adequate quarters for a magistrate court assigned
8 principally to serve the municipality, including the facilities necessary to make the space provided
9 functional for its intended use.

10 Section 10. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
11 as follows:

12 If the business of a magistrate court with a magistrate judge presiding becomes congested
13 or if a magistrate judge is, for any cause, unable to act, the Chief Justice of the Supreme Court
14 may, by order, temporarily transfer to such magistrate court a magistrate judge from another
15 circuit. The magistrate judge acting in a county other than one in his or her own circuit shall have
16 all the powers and duties of a magistrate judge regularly appointed and qualified therein.

17 Section 11. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Retired justices and judges, with their consent, may be authorized by the Chief Justice of the
20 Supreme Court to preside in any action or proceeding, or over any term of court, in the
21 magistrate court. If so authorized and acting, the orders, judgments, and decrees of that court
22 entered by such retired justice or judge are as effectual for all purposes as though made by a
23 regularly elected or appointed magistrate. The Supreme Court shall provide for the
24 reimbursement of their expenses.

1 Section 12. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
2 as follows:

3 A magistrate judge appointed pursuant to this chapter may solemnize marriages. The clerk
4 of courts shall collect a fee of twenty dollars for a magistrate's performance of a marriage. The
5 clerk of courts shall remit fees collected under this section to the state treasurer for deposit in
6 the state general fund.

7 Section 13. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
8 as follows:

9 A magistrate judge appointed pursuant to this chapter may administer oaths, take
10 acknowledgments, and depositions.

11 Section 14. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
12 as follows:

13 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
14 circuit courts to issue summonses, warrants of arrest, and warrants for searches and seizures.

15 Section 15. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
16 as follows:

17 No party may be deprived of the assistance of an attorney, at the party's expense, in small
18 claims or magistrate court.

19 Section 16. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
20 as follows:

21 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
22 circuit courts to fix bond or take personal recognizance of persons charged with an offense.

23 Section 17. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
24 as follows:

1 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
2 circuit courts:

3 (1) To accept defaults for petty offenses;

4 (2) To try contested cases involving a petty offense;

5 (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or

6 (4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance,
7 bylaw, or other police regulation of a political subdivision;

8 if the punishment is a fine not exceeding one thousand dollars or imprisonment for a period not
9 exceeding one year, or both such fine and imprisonment and to impose sentence upon a plea of
10 guilty or nolo contendere. Acceptance of not guilty or nolo contendere pleas shall be in
11 accordance with §§ 23A-7-2 and 23A-7-8, as applicable.

12 Section 18. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
15 circuit courts to take forfeitures of appearance bonds for violation of any ordinance, bylaw, or
16 other police regulation of a political subdivision.

17 Section 19. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
18 as follows:

19 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
20 circuit courts to act as a committing magistrate for all purposes.

21 Section 20. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
22 as follows:

23 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
24 circuit courts to try and determine all cases of misdemeanor and actions or proceedings for

1 violation of any ordinance, bylaw, or other police regulation of a political subdivision.

2 Section 21. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
3 as follows:

4 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
5 circuit courts to try and determine all small claim proceedings.

6 Section 22. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
7 as follows:

8 A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the
9 circuit courts to try and determine all civil actions, if the debt, damage, claim, or value of the
10 property involved does not exceed ten thousand dollars. Any magistrate court with a magistrate
11 judge presiding has jurisdiction in small claims proceedings, if the debt, damage, claim, or value
12 of the property involved does not exceed eight thousand dollars.

13 Section 23. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
14 as follows:

15 A magistrate court with a magistrate judge presiding has jurisdiction, upon assignment of the
16 presiding judge of the circuit, to act in lieu of a circuit judge having jurisdiction heretofore
17 granted to county courts or district county courts or judges thereof in relation to the enforcement
18 or administration of the provisions of Titles 27A and 27B.

19 Section 24. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Except in small claims proceedings, a verbatim record of all proceedings and evidence at
22 trials before a magistrate court with a magistrate judge presiding shall be maintained either by
23 electrical devices or by stenographic means, as the magistrate may direct. However, if any party
24 to the action requests stenographic reporting of the proceedings, the reporting shall be done

1 stenographically. The requesting party in a civil matter shall pay the costs of reporting the
2 proceedings. If no record is kept, the appeal, if appeal is authorized by law, shall be de novo in
3 circuit court.

4 Section 25. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final
7 order or judgment of the magistrate court with a magistrate judge presiding, and such appeal
8 shall be taken in the manner prescribed by law or rule for appeals to the circuit court.

9 Section 26. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
10 as follows:

11 Any attorney who is a part-time magistrate judge may practice law under such conditions as
12 the circuit judges sitting en banc in the judicial circuit may provide, subject to Supreme Court
13 rule.

14 Section 27. That chapter 16-12B be amended by adding thereto a NEW SECTION to read
15 as follows:

16 No magistrate judge appointed on a full-time basis may act as counsel or be associated with
17 others as counsel in any court of this state. Each magistrate judge is bound by the Code of
18 Judicial Conduct adopted by the Supreme Court.

19 Section 28. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Any duly appointed clerk or any deputy clerk who meets the qualifications of a clerk
22 magistrate may be appointed as a clerk magistrate. Any clerk or deputy clerk who has been
23 appointed a clerk magistrate may act as such in any circuit of this state if placed on temporary
24 duty assignment in another circuit.

1 Section 29. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
2 as follows:

3 No person is eligible for appointment to the office of clerk magistrate unless such person is
4 a graduate of a high school or has attained the equivalent of a high school education as indicated
5 by the possession of a certificate of equivalency issued by the State Department of Education or
6 the former Department of Public Instruction or the former Division of Elementary and Secondary
7 Education based upon the record made on the general education development test.

8 Section 30. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
9 as follows:

10 No clerk magistrate may take office for the first time as a magistrate until such person has
11 attended an institute on the duties and functioning of the magistrate's office to be held under the
12 supervision of the Supreme Court, unless such attendance is waived by the Supreme Court.

13 Section 31. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
14 as follows:

15 The Supreme Court shall establish the institute and shall provide that the institute be held at
16 least once every two years. It may establish an institute at such other times and for such other
17 purposes as it deems necessary and may require the attendance of any clerk magistrate.

18 Section 32. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 A clerk magistrate appointed pursuant to this chapter may solemnize marriages. The clerk
21 of courts shall collect a fee of twenty dollars for a clerk magistrate's performance of a marriage.
22 The clerk of courts shall remit fees collected under this section to the state treasurer for deposit
23 in the state general fund.

24 Section 33. That chapter 16-12C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A clerk magistrate appointed pursuant to this chapter has authority to administer oaths, take
3 acknowledgments, and depositions.

4 Section 34. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
7 circuit courts to issue summonses, warrants of arrest, and warrants for searches and seizures.

8 Section 35. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
9 as follows:

10 No party may be deprived of the assistance of an attorney, at the party's expense, in small
11 claims or magistrate court.

12 Section 36. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
15 circuit courts to act as a committing magistrate if voluntary and knowledgeable waiver of
16 preliminary hearing has been given before the court. The magistrate court may conduct
17 preliminary hearings as a committing magistrate unless demand is made by the defendant prior
18 to such hearing to have the hearing conducted before a magistrate judge or a circuit judge to be
19 assigned by the presiding judge.

20 Section 37. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
21 as follows:

22 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
23 circuit courts to fix bond or take personal recognizance of persons charged with an offense in
24 accordance with the schedule adopted pursuant to subdivision 16-2-21(8).

1 Section 38. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
2 as follows:

3 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
4 circuit courts:

- 5 (1) To accept defaults for petty offenses;
6 (2) To try contested cases involving a petty offense;
7 (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense; or
8 (4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance,
9 bylaw, or other police regulation of a political subdivision;

10 if the punishment is a fine not exceeding two hundred dollars or imprisonment for a period not
11 exceeding thirty days, or both such fine and imprisonment and to impose sentence upon a plea
12 of guilty or nolo contendere, which sentence shall be in accordance with § 23-1A-22 or
13 schedules adopted pursuant to subdivision 16-2-21(8). However, if the offense or violation is not
14 covered by said schedules, the magistrate court may impose a sentence of a fine as authorized
15 by statute, ordinance, bylaw, or police regulation or two hundred dollars, whichever is less.
16 Acceptance of not guilty or nolo contendere pleas shall be in accordance with §§ 23A-7-2 and
17 23A-7-8, as applicable.

18 Section 39. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
21 circuit courts to take forfeitures of appearance bonds for violation of any ordinance, bylaw, or
22 other police regulation of a political subdivision in accordance with schedules adopted pursuant
23 to subdivision 16-2-21(8).

24 Section 40. That chapter 16-12C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the
3 circuit courts, in noncontested civil actions or noncontested small claims proceedings where the
4 amount of money or damage does not exceed eight thousand dollars, to take the necessary
5 evidence and to enter a judgment.

6 Section 41. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Except in small claims proceedings, a verbatim record of all proceedings and evidence at
9 trials before a clerk magistrate shall be maintained either by electrical devices or by stenographic
10 means, as the magistrate may direct. However, if any party to the action requests stenographic
11 reporting of the proceedings, the reporting shall be done stenographically. The requesting party
12 in a civil matter shall pay the costs of reporting the proceedings. If no record is kept, the appeal,
13 if appeal is authorized by law, shall be de novo in circuit court.

14 Section 42. That chapter 16-12C be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Unless appeal is denied by law, there is a right of appeal to the circuit court from any final
17 order or judgment of the magistrate court with a clerk magistrate presiding, and such appeal shall
18 be taken in the manner prescribed by law or rule for appeals to the circuit court.

19 Section 43. That §§ 16-12A-1 to 16-12A-3, inclusive, 16-12A-3.2, 16-12A-4, 16-12A-5 to
20 16-12A-7, inclusive, and 16-12A-8 to 16-12A-30, inclusive, be repealed.